RAMASAMY PITCHAI

v.

V. MUTHU

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[SUIT NO. 1567 OF 1974]
19 MAY 1987

CONTRACT: *Agreement to sell property for RM15,000 - Purchase price settled in full - Transfer to be effected only with prior consent of Ruler-in-Council - Whether agreement a sale/purchase agreement or security for loan - Question of evidence - Whether oral evidence admissible to vary or modify terms of written agreement.*

In this case, the only issue was whether an agreement dated 21 June 1972 entered into by the deceased plaintiff and the deceased defendant was a sale/purchase agreement of the property in question or an agreement as a security for a loan.

Held:

The Court ruled that the plaintiff must succeed on his claim and ordered that the agreement dated 21 June 1972 be specifically enforced against the defendant. The Senior Assistant Registrar was ordered to execute the necessary transfer documents of the said property to the plaintiff and that the Collector of Land Revenue do effect such transfer.

[Plaintiff's claim allowed with costs.]

Cases referred to:
Punusammy & Anor. v. Nathu Ram 3 MC 260
Leong Gan & Ors. v. Tan Chong Motor Co. Ltd. [1969] 2 MLJ 8

For the plaintiff - G. Vadiveloo; M/s. Vadiveloo & Co.
For the defendant - K. Pasupathy; M/s. Pasupathy & Co.

JUDGMENT

Siti Norma Yaakob J:

The only issue raised in this suit is whether an agreement dated 21 June 1972, entered into by the original parties to this suit is an agreement for the sale and purchase of property or one executed as a security for money lent.

Since the filing of this suit both the parties to the agreement had died but in their place are substituted the present plaintiff and defendant, the son and husband of the deceased plaintiff and defendant respectively.

The undisputed facts show that the deceased defendant was and still is the registered proprietress of land held under EMR 5011 for Lots 5377 and 10694 in the Mukim of Tanjong Karang, Kuala Selangor (the property). On 21 June 1972, she entered into an agreement with the deceased plaintiff (AB2-3) whereby she agreed to sell the property for a consideration of RM15,000. The purchase price has been settled in full and since the transfer can only be effected with the prior consent of the Ruler-in-Council, the deceased defendant wrote P2, the very day the agreement was executed, seeking the necessary consent from the Collector of Land Revenue. At the same time, she allowed the deceased plaintiff to move into one of

the lots, Lot 10694 where he and his family had remained to this day and had cultivated the lot whilst she retained possession of the other lot. She had also handed the title deed of the property to the deceased plaintiff and he had been paying all the assessments and other out goings on the property since the execution of the agreement.

P2, the letter seeking approval to transfer the property to the deceased plaintiff was received by the Collector as acknowledged by P3 and 2 years later, on 3 July 1974, the Collector granted the approval of such transfer as contained in his letter, P4.

A copy of P4 was also extended to the deceased plaintiff and when he requested the deceased defendant to execute all the necessary documents of transfer, she refused, alleging that the agreement was not an outright sale and transfer but was the security for the loan of RM15,000 she had received from him.

DW2, the village headman and one of the witnesses to the agreement testified that the parties had travelled to Kuala Selangor to execute the agreement and although initially, there were some discussions about providing a security for a loan, the agreement that was eventually executed, (AB2 - 3) was a sale and purchase agreement and that all parties were fully aware of this. The deceased defendant had also confirmed with him that she had received the purchase price in full and he witnessed her handing a copy of the agreement and the title deed to the deceased plaintiff.

In view of this undisputed testimony and the decisions reached in the cases of *Punusammy & Anor. v. Nathu Ram* 3 MC 260 and *Leong Gan & Ors. v. Tan Chong Motor Co. Ltd.* [1969] 2 MLJ 8 that held that oral evidence are inadmissible to vary or modify the terms of any written agreement, I had ruled that the plaintiff must succeed on his claim and accordingly ordered that the agreement be specifically enforced against the defendant with the Senior Assistant Registrar executing the necessary papers to transfer the property to the plaintiff and that the Collector of Land Revenue effect such transfer. I also awarded costs to the plaintiff.

Also found at [1988] 1 CLJ 101